"बिजनेस पोस्ट के अन्तर्गत डाक शुल्क के नगद भुगतान (बिना डाक टिकट) के प्रेषण हेतु अनुमत. क्रमांक जी. 2-22-छत्तीसगढ़ गजट/38 सि. से. भिलाई, दिनांक 30-5-2001."



पंजीयन क्रमांक
"छत्तीसगढ़/दुर्ग/09/2010-2012."

छत्तीसगढ़ राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 220] रायपुर, सोमवार, दिनांक 4 जुलाई 2011—आषाढ़ 13, शक 1933

कार्यालय मुख्य निर्वाचन पदाधिकारी, छत्तीसगढ़
इन्द्रावती खण्ड, मंत्रालय परिसर, रायपुर

रायपुर, दिनांक 1 जुलाई 2011

क्र. 41/निर्वा. नामा./3/2011/1365.—भारत निर्वाचन आयोग की अधिसूचना संख्या 82/छग-वि.स. (06/2004)/2008/87 दिनांक 3-6-2011 माननीय छत्तीसगढ़ उच्च न्यायालय, बिलासपुर के आदेश क्रमांक 06/04 दिनांक 28 नवम्बर 2006 के आदेश को सर्वसाधारण की जानकारी के लिए प्रकाशित किया जाता है.

सुनील कुमार कुजूर,
मुख्य निर्वाचन पदाधिकारी.

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001

नई दिल्ली, तारीख 3 जून, 2011—13 ज्येष्ठ, 1933 (शक)

अधिसूचना

संख्या. 82/छ.ग.-वि.स./(06/2004)/2008.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्द्वारा निर्वाचन अर्जी सं. 06/2004 में छत्तीसगढ़ उच्च न्यायालय, बिलासपुर के तारीख 28 नवम्बर, 2006 के आदेश को एतद्द्वारा प्रकाशित करता है.

आदेश से,

हस्ता./-
(के. अजय कुमार)
प्रधान सचिव,
भारत निर्वाचन आयोग.

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Election Petition No. 06 of 2004

Khemraj Dhritlahare and another

Versus

Chief Election Commissioner, Raipur & Others

Present :—

Shri Vishnu Koshta, Advocate	:	For the petitioners
Shri Vinay Harit, Sr. Advocate with		
Shri N. K. Shrivastava, Advocate	:	For respondents No. 1 & 2
Shri S. C. Verma, Advocate	:	For respondent No. 3 & 6
Shri R. K. Pali, Advocate	.	For respondent No. 8

ORDER

(Passed on 28 November, 2006)

L. C. BHADOO, J.

1. By this election petition, petitioner No. 1-Khemraj Dhritlahare, who contested the election as a candidate of "Apna Dal" from a single member Khallari Constituency No. 55 of C. G. Legislative Assembly, District Mahasamund held in the month of November, 2003 and petitioner No. 2-Ramesh Nishad being a voter of that constituency, have questioned the election of respondent No. 3-Pritam Singh Deewan, as Bhartiya Janta Party candidate was declared to be elected on 4-12-2003 in the said election.

2. Brief facts leading to filing of this election petition are that the Election Commission of India issued a notification on 6-10-2003 calling upon the voters of Constituency No. 55 i.e. Khallari, District Mahasamund for electing a Member of Chhattisgarh Legislative Assembly to represent the said Constituency in the Legislative Assembly and issued following election programme;

a.	Filing of nomination papers	7-11-03 upto 14-11-03
b.	Scrutiny of nomination papers	15-11-2003
c.	Withdrawal of nomination papers	17-11-2003
d.	Date of polling	1-12-2003
e.	Date of counting and declaration of results	4-12-2003

In the said election, petitioner No. 1 and respondents No. 3 to 15 herein, in all 14 candidates contested the election. Petitioner No. 1 contested the said election as a candidate of recognized political party "Apna Dal", whereas, respondent No. 3-returned candidate contested the election as a candidate of "Bhartiya Janta Party" (BJP), in the said election respondent No. 3 was declared elected. The case of petitioner No. 1 is that being the authorized candidate of registered political party "Apna Dal", he submitted his nomination paper alongwith Form-B authorized and given by the President of 'Apna Dal'. After scrutiny of papers, the Returning Officer, as per provisions of Rule 10 (1) of the Conduct of Elections Rules, 1961 (for short "Rules, 1961"), prepared a list of contesting candidates in compliance of sub-section (1) of Section 38 of the Representation of the People Act, 1951 (for short "Act of 1951") in the Form 7A. The same was supplied to petitioner No. 1 on 17-11-2003. On receiving the said list, petitioner No. 1 found that his name was mentioned at Sr. No. 8 as an independent candidate, therefore, he immediately orally objected the same to the Returning Officer that he is a candidate of "Apna Dal" whereas in Form 7A, he has been shown as an independent candidate which is contrary to the provisions of the Act of 1951 and Rules, 1961. Copy of Form 7A is Annexure P-4 to the election petition. Election agent of petitioner No. 1 namely Agam Das Jangde also contacted the Returniung Officer and orally raised the same objection but the Returning Officer neither gave any opportunity of hearing to petitioner No. 1, nor his election agent. On 5-12-2003, petitioner No. 1 submitted a representation to the Chief Election Officer of the State, thereafter, on 22-12-2003 he submitted a repesentation to the Election Commission of India, then he applied for the certified copies of documents, but the same were not supplied to him. Action of respondent No. 2 was contrary to the provisions of Rules, 1961 & the Act of 1951 and thereby the immage of petitioner No. 1 was deteriorated. The District Returning Officer deliberately avoided the provisions of the Act of 1951 & Rules, 1961. Therefore it has been prayed that the election of respondent No. 3 be declared void on the grounds mentioned in Section 100 (1) (c) and 100 (1) (d) (iv) of the Act of 1951.

3. Return has been filed on behalf of respondents No. 1 & 2 in which the allegation of petitioner No. 1 that he was shown as an independent candidate in Form 7A has been admitted, however, it has been mentioned that the symbol, which was reserved for "Apna Dal", was allotted to the petitioner No. 1. Moreover, the votes were cast through the electronic voting machine, the electronic voting machine only displays the name of candidate and symbol of the candidate, therefore, the said error has not materially affected the prospects of petitioner No. 1 in the election. It has also been mentioned that immediately after issuance of the list of the contesting candidates alongwith their symbols and party name in Form 7A, no objection was raised by petitioner No. 1 or his election agent and the averments to this effect is totally wrong. As far as the question of raising objection on 5-12-2003 is concerned, the same was raised after declaration of the result of election, therefore, the election authority was not able to take any action Ultimately, it has been prayed that the election petition is liable to be dismissed.

4. No return was filed on behalf of other respondents.

5. Based on the pleadings of parties following issues ware framed;

a. Whether, showing petitioner No. 1 as an independent candidate in Form 7(A) violates the provisions of the Representation of People Act or any rules or orders passed thereunder ?

b. Whether, petitioner No. 1 raised objection against Form 7 (A) to the Returning officer of the Constituency or the Chief Electoral Officer ?

c. Whether, showing the petitioner No. 1 as an independent candidate in Form 7 (A) has materially affected the result of returned candidate respondent No. 3 ?

d. Relief.

In support of election petition, petitioner No. 1 examined 11 witnesses, however, no evidence has been adduced on behalf of the respondents.

6. I have heard Shri Vishnu Koshta, Advocate for the petitioners; Shri Vinay Harit, Sr. Advocate with Shri N. K. Shrivastava, Advocate for respondents No. 1 & 2 ; Shri S. C. Verma, Advocate for respondents No. 3 & 6 and Shri R. K. Pali, Advocate for respondent No. 8.

ISSUE NO. 1;

7. As far as this issue is concerned, as per provisions of sub-sections (1) & (2) of Section 38 of the Act of 1951, the District Returning Officer was required to prepare and publish a list of contesting candidates in such form and manner, as may be prescribed and further that the candidates were required to be : (i) classified as candidates of recognized political parties; (ii) candidates of registered political parties other than those mentioned in clause (i); (iii) other candidates. As per Rule 10 (1) of the Rules, 1961 the returning officer was required to prepare the list of the contesting candidates in Form 7 A as per the particulars set out in the said Form. Perusal of Form 7A, annexed with the election petition as Annexure P-4 reveals that in compliance of the rules a list of contesting candidates in Form 7A was prepared on 17-11-2003. The Returning Officer, in column No. 4 of the said form, was required to mention the name of political party on whose behalf the candidate was contesting the election and in column No. 5, he was required to mention the name of symbol allotted to each candidate. Petitioner No. 1 was shown at Sr. No. 8 in the Form 7A in the category of 'others' and he was shown to be an independent candidate and symbol of 'Lock & Key' was allotted to him. Whereas, it is admitted position that petitioner No. 1 was the candidate of recognized political party "Apna Dal" and for that party symbol of 'Lock & Key' was reserved by the Election Commission of India. Therefore Form 7A was not prepared strictly inconsonance with the Rule 10 of Rules, 1961 and as such, this issue is decided in favour of petitioners herein.

ISSUE NO. 2;

8. As far as this issue is concerned, in the election petition it has been mentioned that on 17-11-2003 itself the list of contesting candidates, Annexure P-4 was issued and when the petitioner No. 1 perused the said list, he noticed that he was shown as independent candidate instead of "Apna Dal" candidate, therefore, he immediately orally objected to the Returning Officer. His election agent namely Agam Das Jangde also orally objected to it, but no heed was paid by the Returning Officer. This has been emphatically denied in the reply of respondents No. 1 & 2 no cogent proof has been furnished by the petitioner that in any way he raised the objection regarding the fact that why his name has been mentioned as an independent candidate in the list. If he or his agent raised any objection and that was not attended to by the Returning Officer, then he was required to raise the objection in writing, which was never done and only after the declaration of results on 4-12-2003, a written objection was sent on 5-12-2003 to the State Chief Election Commissioner. In view of the above, petitioner No. 1 has not been able to establish that any objection was raised by him or his agent immediately after the issuance of Form 7A and this is only an afterthought. Nothing prevented the petitioner No. 1 to send the written objection with regard to the irregularity committed by the Returning Officer in issuance of the list of contesting candidates, as such, this is issued is decided against the petitioners.

ISSUE NO. 3;

9 As far as this issue is concerned, as per provisions of the Act of 1951 an election can be challenged on the grounds laid down in Section 100 of the Act of 1951 for declaring an election to be void. Petitioner No. 1's grievance is that the Form No. 7A i.e. list of contesting candidates was not prepared in accordance with the Rules, 1961 as also the orders made by the Election Commision of India in that respect, therefore, the case of petitioner No. 1 is covered under the provisions of sub-clause (iv) of clause (d) of sub-section (1) of Section 100 of the Act of 1951, which envisages as under :—

"(1) Subject to the provisions of sub-section (2) if (the High Court) is of opinion;

(d) that the result of the election, in so far as it concerns, a returned candidate, has been materially affected—

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, (the High Court) shall declare the election of the returned candidate to be void."

The Petitioner No. 1 was required to plead the grounds with specific cogent pleadings as also by leading clear and cogent evidence to the effect that on account of showing him as an independent candidate in Form 7A instead of a candidate of 'Apna Dal', the result of returned candidate i.e. respondent No. 3 was materially affected in his favour.

10. In the matter of Smt. Lata Devi (Mali) Vs Haru Rajwar reported in AIR 1990 SUPREME COURT 19 the Hon'ble Apex Court has held that *"the party who wishes to get an election declared void has to establish by satisfactory evidence that the result of the poll had in fact been materially affected by the violation of R. 10 (5) of the Rules. For doing this, it has to be demonstrated that the votes would have been diverted in such a way that the returned candidate would have been unsuccessful"*. The Court has further held that *"in the instant case there was no evidence to demonstrate that the returned candidate having derived any benefit from the change of symbol of the election petitioner. Contesting candidate to whom the 'bow and arrow' symbol was later alloted, was not the successful candidate. The election petitioner was required to show that such number of votes had gone in favour of the successful candidate instead of in favour of the petitioner, simply because of change of symbol as would, without that number of votes, make the successful candidate unsuccessful. The petitioner besides making bare statement, had not produced any other satisfactory evidence in support of such a proposition. Therefore. It cannot be said that the result of the election, in so for as it concerned the returned candidate, was materially affected. The violation of sub-rule (5) of R. 10 per se will not invalidate the election. The election petitioner has also to prove that the result of the election , in so far as it concerns the returned candidate was materially affected"*.

11. Further in the matter of Vashist Narain Sharma Vs. Dev Chandra and others reported in AIR 1954 S.C. 513 the Hon'ble Apex Court has held that;

"The words the result of the election has been materially affected indicate that the result should not been judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate."

The Court further held that;

"mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. Section 100 clearly lays down that improper acceptance is not to be regarded as fatal to the election unless the Tribunal is of opinion that the result has been materially affected."

12. Therefore in the first instance, petitioner No. 1 was required to plead 'material facts and full particulars' in the election petition that how the election of respondent No. 3 was materially affected in his favour on account of showing the prtitioner No. 1 as an independent candidate in Form No. 7A Petitioner No. 1 was further required to plead that on account of that fact how many votes otherwise would have been cast in his favour which have been shifted in favour of the returned candidate and on account of that he was elected. If we look into the election petition of the petitioners, there is not a single mention that on account of the fact that petitioner No. 1 was shown as an independent candidate in Form 7A, so much votes were shifted in favour of respondent No. 3 and on account of that he has been declared elected. In fact, there is no pleading in the election petition showing how the result of respondent No. 3 was materially affected in his favour on account of the fact that petitioner No. 1 was shown as an independent candidate. Without pleading to that effect, the respondents have not been able to raise their defence properly and in fact that is why they have not adduced any evidence in rebuttal. In order to give proper opportunity to the respondents to defend their case the petitioners ought to have raised grounds, so that the respondents ware able to raise their defence in rebuttal.

13. Now coming to the evidence adduced, all 11 witnesses including the petitioner No. 1 and his agent, have stated that when the voters of petitioner No. 1 ranging from various communities came to know that petitioner No. 1 is an independent candidate, he is not the candidate of 'Apna Dal' their votes were shifted to respondent No. 3. Evidence in this respect is totally vague, scanty, unsatisfactory and unreliable, for the reasons that it has not been stated by any of the witnesses that how many votes ware shifted in favour of respondent No. 3 on account of showing petitioner No.1 as an independent candidate. As per evidence of petitioner No. 1's witnesses all the candidates of 'Apna Dal' even forsited their security amount, as they were not able to secure the number of votes to save their security. This shows the prospect of the candidates of 'Apna Dal' during the election of 2003 in the State of C.G. was not encouraging. Moreover, it is an admitted position that symbol of

'Apna Dal' was allotted to petitioner No. 1 and it is common knowledge that general public cast their votes based on the symbol of the party. During this election, electronic voting machines were used for casting of vote by the voters, on electronic voting machine, only the names of candidates & symbol allotted to each candidate were shown and based on that voters were required to cast their vote. The symbol of 'Lock & Key' reserved for 'Apna Dal' was allotted to petitioner No. 1, which was shown on the electronic voting machine; therefore, on this ground only the petitioner No. 1's claim falls to the ground that his votes were shifted to respondent No. 3. In this respect petitioner No. 1 himself has admitted that identity card (Annexure P-1) was issued to him in the name of 'Apna Dal', even the vehicle, which was used by petitioner No. 1 in election campaigning, was permitted in the name of 'Apna Dal'. The challenge of petitioner No. 1 is also without any force, for the reasons that Form 7A is only issued & hanged in the office by the Returning Officer, copies are given to the contesting candidates, the symbol allotted to petitioner No. 1 was of 'Apna Dal'. Therefore, the petitioner No. 1 grievance that on account of non-mentioning of Apna Dal in Form 7A his voters were shifted is without any basis.

14. As per evidence of petitioner No. 1 himself in Khallari constituency only 40% voters are literate and remaining are illiterate, therefore, there was no occasion for the remaining illiterate voters to read the name of party of petitioner No.1 from whom he was contesting the election. The evidence of the witnesses is based on surmises and conjectures, no definite, cogent, clear and reliable evidence has been adduced that on account of showing petitioner No. 1 as an independent candidate how many votes were shifted to respondent No. 3 which affected the result materially in his favour and on account of that he won the election.

15. In the result, the petitioners have utterly failed to adduce clear, cogent and reliable evidence to establish the fact that on account of showing petitioner No. 1 as an independent candidate in Form No. 7A the result of returned candidate-respondent No. 3 was materially affected in his favour.

16. Therefore, for the foregoing reasons, the election petition of the petitioners is liable to be dismissed and it is accordingly dismissed.

Sd/-
L. C. BHADOO
Election Judge.

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

New Delhi, dated 3rd June, 2011—13 Jyaistha, 1933 (Saka)

NOTIFICATION

No. 82/CG-LA/(06/2004)/2008.—In pursuance of Section 106 of Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes judgement/order of the High Court of Judicature at Bilaspur (Chhattisgarh) dated 28th November, 2006 in Election Petition No. 06/2004.

By order,

Sd/-
(K. AJAY KUMAR)
Pr. Secretary,
Election Commission of India.

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Election Petition No. 06 of 2004

Khemraj Dhritlahare and another

Versus

Chief Election Commissioner, Raipur & Others

Present :—

Shri Vishnu Koshta, Advocate	:	For the petitioners
Shri Vinay Harit, Sr. Advocate with		
Shri N. K. Shrivastava, Advocate	:	For respondents No. 1 & 2
Shri S. C. Verma, Advocate	:	For respondent No. 3 & 6
Shri R. K. Pali, Advocate	:	For respondent No. 8

ORDER

(Passed on 28 November, 2006)

L. C. BHADOO, J.

1. By this election petition, petitioner No. 1-Khemraj Dhritlahare, who contested the election as a candidate of "Apna Dal" from a single member Khallari Constituency No. 55 of C. G. Legislative Assembly, District Mahasamund held in the month of November, 2003 and petitioner No. 2-Ramesh Nishad being a voter of that constituency, have questioned the election of respondent No. 3-Pritam Singh Deewan, as Bhartiya Janta Party candidate was declared to be elected on 4-12-2003 in the said election.

2. Brief facts leading to filing of this election petition are that the Election Commission of India issued a notification on 6-10-2003 calling upon the voters of Constituency No. 55 i.e. Khallari, District Mahasamund for electing a Member of Chhattisgarh Legislative Assembly to represent the said Constituency in the Legislative Assembly and issued following election programme;

a.	Filing of nomination papers	7-11-03 upto 14-11-03
b.	Scrutiny of nomination papers	15-11-2003
c.	Withdrawal of nomination papers	17-11-2003
d.	Date of polling	1-12-2003
e.	Date of counting and declaration of results	4-12-2003

In the said election, petitioner No. 1 and respondents No. 3 to 15 herein, in all 14 candidates contested the election. Petitioner No. 1 contested the said election as a candidate of recognized political party "Apna Dal", whereas, respondent No. 3-returned candidate contested the election as a candidate of "Bhartiya Janta Party" (BJP), in the said election respondent No. 3 was declared elected. The case of petitioner No. 1 is that being the authorized candidate of registered political party "Apna Dal", he submitted his nomination paper alongwith Form-B authorized and given by the President of 'Apna Dal'. After scrutiny of papers, the Returning Officer, as per provisions of Rule 10 (1) of the Conduct of Elections Rules, 1961 (for short "Rules, 1961"), prepared a list of contesting candidates in compliance of sub-section (1) of Section 38 of the Representation of the People Act, 1951 (for short "Act of 1951") in the Form 7A. The same was supplied to petitioner No. 1 on 17-11-2003. On receiving the said list, petitioner No. 1 found that his name was mentioned at Sr. No. 8 as an independent candidate, therefore, he immediately orally objected the same to the Returning Officer that he is a candidate of "Apna Dal" whereas in Form 7A, he has been shown as an independent candidate which is contrary to the provisions of the Act of 1951 and Rules, 1961. Copy of Form 7A is Annexure P-4 to the election petition. Election agent of petitioner No. 1 namely Agam Das Jangde also contacted the Returniung Officer and orally raised the same objection but the Returning Officer neither gave any opportunity of hearing to petitioner No. 1, nor his election agent. On 5-12-2003, petitioner No. 1 submitted a representation to the Chief Election Officer of the State, thereafter, on 22-12-2003 he submitted a repesentation to the Election Commission of India, then he applied for the certified copies of documents, but the same were not supplied to him. Action of respondent No. 2 was contrary to the provisions of Rules, 1961 & the Act of 1951 and thereby the immage of petitioner No. 1 was deteriorated. The District Returning Officer deliberately avoided the provisions of the Act of 1951 & Rules, 1961. Therefore it has been prayed that the election of respondent No. 3 be declared void on the grounds mentioned in Section 100 (1) (c) and 100 (1) (d) (iv) of the Act of 1951.

3. Return has been filed on behalf of respondents No. 1 & 2 in which the allegation of petitioner No. 1 that he was shown as an independent candidate in Form 7A has been admitted, however, it has been mentioned that the symbol, which was reserved for "Apna Dal", was allotted to the petitioner No. 1. Moreover, the votes were cast through the electronic voting machine, the electronic voting machine only displays the name of candidate and symbol of the candidate, therefore, the said error has not materially affected the prospects of petitioner No. 1 in the election. It has also been mentioned that immediately after issuance of the list of the contesting candidates alongwith their symbols and party name in Form 7A, no objection was raised by petitioner No. 1 or his election agent and the averments to this effect is totally wrong. As far as the question of raising objection on 5-12-2003 is concerned, the same was raised after declaration of the result of election, therefore, the election authority was not able to take any action. Ultimately, it has been prayed that the election petition is liable to be dismissed.

4. No return was filed on behalf of other respondents.

5. Based on the pleadings of parties following issues ware framed;

a. Whether, showing petitioner No. 1 as an independent candidate in Form 7(A) violates the provisions of the Representation of People Act or any rules or orders passed thereunder ?

b. Whether, petitioner No. 1 raised objection against Form 7 (A) to the Returning officer of the Constituency or the Chief Electoral Officer ?

c. Whether, showing the petitioner No. 1 as an independent candidate in Form 7 (A) has materially affected the result of returned candidate respondent No. 3 ?

d. Relief.

In support of election petition, petitioner No. 1 examined 11 witnesses, however, no evidence has been adduced on behalf of the respondents.

6. I have heard Shri Vishnu Koshta, Advocate for the petitioners; Shri Vinay Harit, Sr. Advocate with Shri N. K. Shrivastava, Advocate for respondents No. 1 & 2 ; Shri S. C. Verma, Advocate for respondents No. 3 & 6 and Shri R. K. Pali, Advocate for respondent No. 8.

ISSUE NO. 1;

7. As far as this issue is concerned, as per provisions of sub-sections (1) & (2) of Section 38 of the Act of 1951, the District Returning Officer was required to prepare and publish a list of contesting candidates in such form and manner, as may be prescribed and further that the candidates were required to be ; (i) classified as candidates of recognized political parties; (ii) candidates of registered political parties other than those mentioned in clause (i); (iii) other candidates. As per Rule 10 (1) of the Rules, 1961 the returning officer was required to prepare the list of the contesting candidates in Form 7 A as per the particulars set out in the said Form. Perusal of Form 7A, annexed with the election petition as Annexure P-4 reveals that in compliance of the rules a list of contesting candidates in Form 7A was prepared on 17-11-2003. The Returning Officer, in column No. 4 of the said form, was required to mention the name of political party on whose behalf the candidate was contesting the election and in column No. 5, he was required to mention the name of symbol allotted to each candidate. Petitioner No. 1 was shown at Sr. No. 8 in the Form 7A in the category of 'others' and he was shown to be an independent candidate and symbol of 'Lock & Key' was allotted to him. Whereas, it is admitted position that petitioner No. 1 was the candidate of recognized political party "Apna Dal" and for that party symbol of 'Lock & Key' was reserved by the Election Commission of India. Therefore Form 7A was not prepared strictly inconsonance with the Rule 10 of Rules, 1961 and as such, this issue is decided in favour of petitioners herein.

ISSUE NO. 2;

8. As far as this issue is concerned, in the election petition it has been mentioned that on 17-11-2003 itself the list of contesting candidates, Annexure P-4 was issued and when the petitioner No. 1 perused the said list, he noticed that he was shown as independent candidate instead of "Apna Dal" candidate, therefore, he immediately orally objected to the Returning Officer. His election agent namely Agam Das Jangde also orally objected to it, but no heed was paid by the Returning Officer. This has been emphatically denied in the reply of respondents No. 1 & 2 no cogent proof has been furnished by the petitioner that in any way he raised the objection regarding the fact that why his name has been mentioned as an independent candidate in the list. If he or his agent raised any objection and that was not attended to by the Returning Officer, then he was required to raise the objection in writing, which was never done and only after the declaration of results on 4-12-2003, a written objection was sent on 5-12-2003 to the State Chief Election Commissioner. In view of the above, petitioner No. 1 has not been able to establish that any objection was raised by him or his agent immediately after the issuance of Form 7A and this is only an afterthought. Nothing prevented the petitioner No. 1 to send the written objection with regard to the irregularity committed by the Returning Officer in issuance of the list of contesting candidates, as such, this is issued is decided against the petitioners.

ISSUE NO. 3;

9. As far as this issue is concerned, as per provisions of the Act of 1951 an election can be challenged on the grounds laid down in Section 100 of the Act of 1951 for declaring an election to be void. Petitioner No. 1's grievance is that the Form No. 7A i.e. list of contesting candidates was not prepared in accordance with the Rules, 1961 as also the orders made by the Election Commision of India in that respect, therefore, the case of petitioner No. 1 is covered under the provisions of sub-clause (iv) of clause (d) of sub-section (1) of Section 100 of the Act of 1951, which envisages as under :—

"(1) Subject to the provisions of sub-section (2) if (the High Court) is of opinion;

(d) that the result of the election, in so far as it concerns, a returned candidate, has been materially affected—

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, (the High Court) shall declare the election of the returned candidate to be void."

The Petitioner No. 1 was required to plead the grounds with specific cogent pleadings as also by leading clear and cogent evidence to the effect that on account of showing him as an independent candidate in Form 7A instead of a candidate of 'Apna Dal', the result of returned candidate i.e. respondent No. 3 was materially affected in his favour.

10. In the matter of Smt. Lata Devi (Mali) Vs Haru Rajwar reported in AIR 1990 SUPREME COURT 19 the Hon'ble Apex Court has held that *"the party who wishes to get an election declared void has to establish by satisfactory evidence that the result of the poll had in fact been materially affected by the violation of R. 10 (5) of the Rules. For doing this, it has to be demonstrated that the votes would have been diverted in such a way that the returned candidate would have been unsuccessful"*. The Court has further held that *"in the instant case there was no evidence to demonstrate that the returned candidate having derived any benefit from the change of symbol of the election petitioner. Contesting candidate to whom the 'bow and arrow' symbol was later alloted, was not the successful candidate. The election petitioner was required to show that such number of votes had gone in favour of the successful candidate instead of in favour of the petitioner, simply because of change of symbol as would, without that number of votes, make the successful candidate unsuccessful. The petitioner besides making bare statement, had not produced any other satisfactory evidence in support of such a proposition. Therefore. It cannot be said that the result of the election, in so for as it concerned the returned candidate, was materially affected. The violation of sub-rule (5) of R. 10 per se will not invalidate the election. The election petitioner has also to prove that the result of the election, in so far as it concerns the returned candidate was materially affected"*.

11. Further in the matter of Vashist Narain Sharma Vs. Dev Chandra and others reported in AIR 1954 S.C. 513 the Hon'ble Apex Court has held that;

"The words the result of the election has been materially affected indicate that the result should not been judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate."

The Court further held that;

"mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. Section 100 clearly lays down that improper acceptance is not to be regarded as fatal to the election unless the Tribunal is of opinion that the result has been materially affected."

12. Therefore in the first instance, petitioner No. 1 was required to plead 'material facts and full particulars' in the election petition that how the election of respondent No. 3 was materially affected in his favour on account of showing the prtitioner No. 1 as an independent candidate in Form No. 7A Petitioner No. 1 was further required to plead that on account of that fact how many votes otherwise would have been cast in his favour which have been shifted in favour of the returned candidate and on account of that he was elected. If we look into the election petition of the petitioners, there is not a single mention that on account of the fact that petitioner No. 1 was shown as an independent candidate in Form 7A, so much votes were shifted in favour of respondent No. 3 and on account of that he has been declared elected. In fact, there is no pleading in the election petition showing how the result of respondent No. 3 was materially affected in his favour on account of the fact that petitioner No. 1 was shown as an independent candidate. Without pleading to that effect, the respondents have not been able to raise their defence properly and in fact that is why they have not adduced any evidence in rebuttal. In order to give proper opportunity to the respondents to defend their case the petitioners ought to have raised grounds, so that the respondents ware able to raise their defence in rebuttal.

13. Now coming to the evidence adduced, all 11 witnesses including the petitioner No. 1 and his agent, have stated that when the voters of petitioner No. 1 ranging from various communities came to know that petitioner No. 1 is an independent candidate, he is not the candidate of 'Apna Dal' their votes were shifted to respondent No. 3. Evidence in this respect is totally vague, scanty, unsatisfactory and unreliable, for the reasons that it has not been stated by any of the witnesses that how many votes ware shifted in favour of respondent No. 3 on account of showing petitioner No.1 as an independent candidate. As per evidence of petitioner No. 1's witnesses all the candidates of 'Apna Dal' even forsited their security amount, as they were not able to secure the number of votes to save their security. This shows the prospect of the candidates of 'Apna Dal' during the election of 2003 in the State of C.G. was not encouraging. Moreover, it is an admitted position that symbol of

'Apna Dal' was allotted to petitioner No. 1 and it is common knowledge that general public cast their votes based on the symbol of the party. During this election, electronic voting machines were used for casting of vote by the voters, on electronic voting machine, only the names of candidates & symbol allotted to each candidate were shown and based on that voters were required to cast their vote. The symbol of 'Lock & Key' reserved for 'Apna Dal' was allotted to petitioner No. 1, which was shown on the electronic voting machine; therefore, on this ground only the petitioner No. 1's claim falls to the ground that his votes were shifted to respondent No. 3. In this respect petitioner No. 1 himself has admitted that identity card (Annexure P-1) was issued to him in the name of 'Apna Dal', even the vehicle, which was used by petitioner No. 1 in election campaigning, was permitted in the name of 'Apna Dal'. The challenge of petitioner No. 1 is also without any force, for the reasons that Form 7A is only issued & hanged in the office by the Returning Officer, copies are given to the contesting candidates, the symbol allotted to petitioner No. 1 was of 'Apna Dal'. Therefore, the petitioner No. 1 grievance that on account of non-mentioning of Apna Dal in Form 7A his voters were shifted is without any basis.

14. As per evidence of petitioner No. 1 himself in Khallari constituency only 40% voters are literate and remaining are illiterate, therefore, there was no occasion for the remaining illiterate voters to read the name of party of petitioner No.1 from whom he was contesting the election. The evidence of the witnesses is based on surmises and conjectures, no definite, cogent, clear and reliable evidence has been adduced that on account of showing petitioner No. 1 as an independent candidate how many votes were shifted to respondent No. 3 which affected the result materially in his favour and on account of that he won the election.

15. In the result, the petitioners have utterly failed to adduce clear, cogent and reliable evidence to establish the fact that on account of showing petitioner No. 1 as an independent candidate in Form No. 7A the result of returned candidate-respondent No. 3 was materially affected in his favour.

16. Therefore, for the foregoing reasons, the election petition of the petitioners is liable to be dismissed and it is accordingly dismissed.

Sd/-
L. C. BHADOO
Election Judge.

संचालक, मुद्रण तथा लेखन सामग्री, छत्तीसगढ़ द्वारा शासकीय क्षेत्रीय मुद्रणालय, राजनांदगांव से मुद्रित तथा प्रकाशित—2011.